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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of

Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services

CC Docket No. 94-54 RM-8012

NYNEX COMMENTS

New York Telephone Company, New England Telephone and Telegraph Company, and NYNEX Mobile Communications Company

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SUMMARY

The Commission seeks comment on: (1) whether equal access obligations should be imposed upon CMRS providers; (2) whether the Commission should adopt rules governing interconnection services provided by LECs to CMRS providers; and (3) whether the Commission should propose rules requiring CMRS providers to interconnect with each other.

NYNEX believes that imposition of equal access obligations upon CMRS providers will not benefit consumers. It is NYNEX's experience that equal access has not resulted in lower long-distance rates for cellular customers. On the other hand, NYNEX and other BOC affiliated CMRS providers are at a substantial, competitive disadvantage because they, unlike their competitors, cannot purchase interexchange services at bulk discounted rates and pass the savings onto their customers. In order to eliminate this competitive disparity, NYNEX supports the imposition of equal access obligations upon all CMRS providers until such time as the MFJ's equal access obligations are removed.

NYNEX does not believe that the Commission should adopt rules governing interstate interconnection service provided by LECs to CMRS providers. The current process of negotiating interconnection agreements has resulted in lower rates and more flexible service arrangements.

Finally, NYNEX does not believe that a rule requiring CMRS providers to interconnect with each other would serve the public interest. While NYNEX favors an open network architecture which would permit CMRS providers to interconnect with one another and with the landline network, we believe that such interconnection arrangements can best be arrived at through good faith negotiations between the interested parties rather than through inflexible regulatory mandates.

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NYNEX COMMENTS

The NYNEX Companies ("NYNEX") hereby submit their comments in response to the Commission's Notice of Proposed Rulemaking ("Notice"), released July 1, 1994, in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY OF POSITION

The Notice seeks comment on three basic issues addressed to the manner in which commercial mobile radio services ("CMRS") will be provided in the marketplace:

- (1) whether equal access obligations should be imposed upon CMRS providers;
- (2) whether the Commission should adopt rules governing interconnection services provided by local exchange carriers (LECs) to CMRS providers; and
- (3) whether the Commission should propose rules requiring CMRS providers to interconnect with each other.

NYNEX believes that imposition of equal access obligations upon CMRS providers will not necessarily benefit

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consumers. It is NYNEX's experience that equal access has not resulted in lower long-distance rates for cellular customers. On the other hand, NYNEX and other Regional Holding Companies (RHCs) are at a substantial competitive disadvantage because they, unlike their competitors, cannot purchase interexchange services at bulk discounted rates and pass the savings onto their customers. In order to eliminate this competitive disparity, NYNEX supports the imposition of equal access obligations upon all CMRS providers until such time as the MFJ's equal access requirements with respect to the provision of wireless services are no longer imposed on the RHCs.

NYNEX does not believe that the Commission should adopt rules governing interstate interconnection service provided by LECs to CMRS providers. As the Commission recognizes, the current process of negotiating interconnection agreements has resulted in lower rates and more flexible service arrangements. ²

Finally, NYNEX does not believe that a rule requiring CMRS providers to interconnect with each other would serve the public interest. While NYNEX favors an open network architecture which would permit CMRS providers to interconnect with one another and with the landline network, we believe that such interconnection arrangements should be achieved through good faith negotiations between CMRS providers rather than through inflexible regulatory mandates.

Notice at ¶ 114.

II. EQUAL ACCESS OBLIGATIONS SHOULD BE IMPOSED ON ALL CMRS PROVIDERS ONLY FOR SO LONG AS THE MFJ'S EQUAL ACCESS REQUIREMENTS REMAIN EFFECTIVE.

The Commission tentatively concludes that it should impose equal access obligations on all cellular carriers based on its conclusion that the benefits of equal access outweigh the possible costs associated with equal access conversions and the PIC selection process and the loss of efficiencies that otherwise might be realized through vertical integration of bundled services. NYNEX believes that the Commission's analysis is flawed.

Experience to date demonstrates that the imposition of equal access obligations on the RHCs has not produced substantial public benefits. It is unlikely that the extension of these obligations to cellular or all CMRS providers would produce any benefits other than those realized by interexchange carriers through increased profits. In contrast, the RHCs have previously shown that consumers could save as much as \$200 million per year if the RHCs were not subject to the equal access obligations of the MFJ. For this reason, the Commission should support the efforts presently being undertaken before the Department of Justice and the District Court to modify the MFJ to remove the equal access obligations in connection with the provision of wireless services.

Notice at ¶ 42. The Commission concluded that the record did not permit it to reach a tentative decision as to whether it should impose an equal access obligation on non-cellular CMRS providers and sought comment on that issue (Notice at ¶ 44).

It is clear, however, that for as long as the equal access provisions of the MFJ remain in effect, the RHCs are subject to a substantial competitive disadvantage. As a result, considerations of regulatory parity warrant the Commission imposing equal access obligations on all CMRS providers until such time as the MFJ's equal access requirements with respect to the provision of wireless services are no longer imposed on the RHCs.

A. Equal Access Will Not Result In Lower Prices For Cellular Services.

In the Notice, the Commission concluded that the imposition of equal access obligations on cellular providers will increase customer choice and lower price. The Commission found that equal access would permit interexchange carriers to develop service offerings for discounted "packages" of long distance offerings and would encourage competition in the development of other nationwide customized IC services. The Commission's findings are, for the most part, speculative. In fact, experience to date suggests that the Commission's expectations are not well founded.

It is NYNEX's experience that equal access has not resulted in lower long-distance rates for cellular customers. Although equal access has been available for nearly 10 years, interexchange carriers have generally not offered NYNEX's cellular customers calling plans specifically targeted to cellular use. Nor have ICs offered packages that reduce rates

⁴ Notice at ¶¶ 36-38.

for combined wireline and cellular usage. There is no reason to expect that ICs will suddenly do so if equal access is mandated for all cellular and CMRS providers.

The only way that customers have been able to benefit from reduced prices is through vertical integration or bundling of services. As the Commission recognizes in the Notice, 5 McCaw and other cellular licensees have been able to purchase interexchange service at bulk discounted rates and (at least theoretically) pass the savings onto their customers. Unfortunately, consumers have not reaped the full benefits of such bundling. Because the RHC cellular companies cannot buy long distance service in bulk and resell that service to their customers, the non-RHC cellular companies face little competitive pressure to pass along the bulk-rate savings to their customers. Instead, they are able to mark up long distance prices and pocket the surplus.

The Commission need not be concerned that the imposition of equal access obligations is needed to ensure customer choice of interexchange carriers. The competitiveness of the marketplace will guarantee that companies will satisfy customer demand for the availability of alternative interexchange carriers to carry their interexchange traffic. The introduction of PCS and SMR services will result in more companies offering wireless communications service. If consumers truly want equal access, these companies will be

Notice at ¶ 41.

forced to offer it to their customers in order to compete effectively.

B. Imposition Of Equal Access Obligations Will Achieve Regulatory Parity.

Although the imposition of equal access obligations will not result in lower prices and increased customer choice, the Commission is correct in concluding that imposition of equal access obligations is necessary to implement Congress' directive that all CMRS providers compete under the same rules.

The Commission has over the past decade adopted regulatory policies designed to promote competition in the provision of cellular and other wireless services. Those policies have resulted in a robustly competitive cellular marketplace in which consumers have reaped the benefits of new and improved services and lower rates. Unfortunately, the full benefits of the competition encouraged by the Commission's cellular policies have not been realized as a result of the competitive imbalance created by the equal access provisions of the MFJ.

Currently, the MFJ requires NYNEX and the other RHCs to provide equal access to their cellular customers on all calls that cross LATA boundaries. NYNEX's cellular and other wireless competitors are under no similar legal obligation and no wireless carrier presently offers its customers or interexchange carriers (ICs) equal access. This disparity has placed NYNEX and the other RHCs at a competitive disadvantage. It has also resulted in customers paying higher rates for interLATA calls placed from their mobile phones than would be the case absent these MFJ-imposed requirements.

NYNEX agrees with the Commission's conclusion that considerations of regulatory parity and customer welfare require the elimination of this competitive disparity. The best way to accomplish this objective is not, as the Commission proposes, to impose "permanent" equal access obligations on all CMRS providers. Rather, the Commission should support the efforts being undertaken by the RHCs before the MFJ Court to have those obligations removed.

NYNEX recognizes, however, that the competitive imbalance it faces will continue while the merits of the removal of the MFJ's equal access obligations are debated before the Court. For this reason, NYNEX supports the imposition of equal access obligations upon all CMRS providers until such time as the MFJ's equal access requirements with respect to the provision of wireless services are no longer imposed on the RHCs. 6

The adoption of equal access obligations for all CMRS providers would, by necessity, require the Commission to define the wireless exchange area for all CMRS providers to be coterminous with the LATA boundaries applicable to the RHCs (as modified by any MFJ Court waivers). If the Commission were

Based on its experience in providing cellular equal access, NYNEX does not believe that the costs of providing equal access for CMRS services will be excessive. But, in any event, such costs should be viewed as another cost of doing business which CMRS providers should expect to incur as the RHCs have done over the years.

NYNEX and the other RHCs have filed a waiver request with the MFJ Court, seeking to replace LATAs with MTAs as the local service area.

to use MTAs or some geographic area other than a LATA for non-RHC wireless service providers, regulatory confusion would increase and the competitive imbalance between RHC and non-RHC wireless carriers would still exist.

III. THE EQUAL ACCESS RULES PROPOSED BY THE COMMISSION ARE REASONABLE.

In the event that the Commission adopts equal access requirements for all CMRS providers, it has proposed a number of specific rules which NYNEX generally believes are reasonable and which should be adopted.

Timing of Conversions. NYNEX agrees with the Commission's proposal that the timetable for equal access conversion should be established separately for each CMRS service. The timetable should be the same for all providers of that service, regardless of their size or customer base. The Commission can grant waivers from the conversion schedule for good cause shown.

Local Service Area. As discussed above, the Commission should define the wireless exchange area for all CMRS providers to be coterminous with the LATA boundaries applicable to the RHCs (as modified by any subsequent waivers). Establishing a wholly different map of equal access areas for non-RHC CMRS providers and RHC providers would violate regulatory parity principles.

Technical Feasibility of Equal Access Interconnection.

NYNEX agrees that equal access interconnection arrangements are technically feasible for terminating and originating most cellular interexchange calls. The mobile switching systems can

generally be converted to equal access through software upgrades that are readily available.

Terms and Conditions of Interconnection. NYNEX agrees that to promote fair competition, interexchange carriers (ICs) should be able to interconnect with CMRS providers on the same terms and conditions as interexchange services provided by the mobile carriers themselves. CMRS providers should not be allowed to discriminate against unaffiliated ICs. Furthermore, CMRS providers should notify ICs in advance of any network changes likely to affect their service.

1+ Form of Access. NYNEX agrees that the equal access obligation should include 1+ and 10XXX access to interexchange carriers. This is consistent with the rules governing landline service and RHC cellular operations.

Presubscription, Balloting and Allocation. NYNEX agrees with the presubscription, balloting and allocation proposal suggested by Bell Atlantic. 9 In addition, NYNEX

At present, it is not technically possible to hand-off calls to the caller's presubscribed carrier (PIC) in situations where the caller originates an intraLATA call in his home territory and crosses a LATA boundary served by another mobile system. In order to provide equal access on intersystem handoffs, the call would have to be forwarded to the caller's PIC prior to connection with the adjacent mobile system, a process which takes 12 to 13 seconds under current technology and frequently results in disconnection. For this reason, the BOCs have been granted waivers from the MFJ's equal access requirements in connection with such handoffs.

After balloting, if a new customer wishes service, that customer should be obligated to select a carrier. If the customer fails to do so, 1+ dialing should be blocked and all calls would have to be made on a 10XXX basis. These are the same rules that apply to landline service.

believes that the rules governing PIC changes should be the same for both wireline and wireless carriers.

Cost Recovery. NYNEX recommends that the costs of equal access should be recovered on a proportional basis from carriers based on the number of lines that are presubscribed to the carrier. This is the same approach that was used for landline conversions.

Billing and Collection. NYNEX does not believe that cellular carriers should be required to offer billing and collection services as long as they make Billing Name and Address (BNA) data available so that ICs can do their own billing. However, NYNEX agrees that if cellular carriers offer billing and collection services to ICs, they should be provided on a non-discriminatory basis to all ICs. These services should be provided under contract and not under tariff, consistent with the Commission's Billing and Collections Detariffing Order. 10

The Commission also seeks comment on whether ICs should be granted access to any cellular call screening, routing and delivery data that may be designated in a customer profile maintained in a cellular carrier's database and associated with the IC's customer's cellular account. NYNEX believes that ICs should not be granted access to such databases. ICs have no right to obtain subscriber profile information, including the cellular service features selected by a subscriber as well as an evaluation of the subscriber's credit worthiness. Indeed, the provision of this data would intrude upon the legitimate privacy

¹⁰ See 102 FCC 2d 1150 (1986).

expectations and rights of cellular customers. With respect to call routing information, NYNEX does provide such information to ICs whenever necessary to permit them to transport their customers' calls, including situations where the IC's customer is roaming in another cellular system.

IV. THE COMMISSION SHOULD NOT REQUIRE THE LECS TO TARIFF INTERCONNECTION ARRANGEMENTS.

The Commission seeks comment on whether it should adopt rules governing interconnection service provided by LECs to CMRS providers. NYNEX does not support the adoption of such rules.

NYNEX believes that the current system of negotiated contracts should be retained. 11 Under the Commission's current practice, LECs must negotiate in good faith with CMRS providers regarding the rates, terms and conditions of interconnection. As the Commission notes in the FNPRM, 12 most parties have found this practice to be satisfactory. It has resulted in lower rates and service arrangements better tailored to particular interconnection needs. The current regulatory framework provides relative certainty over the respective rights of carriers concerning interconnection and at the same time, gives carriers the ability to negotiate specific interconnection arrangements that best suit their individual needs. If any CMRS

The NYNEX Telephone Companies already offer interconnection service to CMRS providers through a variety of intrastate contracts and tariff arrangements.

¹² FNPRM ¶ 114.

provider believes that it has been unreasonably denied a particular form of interconnection, it can file a complaint with the Commission.

believes that there is no good reason to change it. Tariffing will only add additional and unnecessary administrative costs and will decrease a carrier's flexibility in structuring interconnection arrangements in an economical and timely manner. Such flexibility is particularly important in the mobile services area where technological advances are constantly evolving. In the Price Cap review proceeding, the Commission recognized that LECs need greater service and rate flexibility in an increasingly competitive local exchange environment. Requiring LECs to tariff interconnection arrangements would be inconsistent with this approach.

The Commission also expresses some concern that LECs will not treat CMRS providers fairly if interconnection arrangements are not prescribed. NYNEX believes that competition in the local exchange market, together with the many other options available to CMRS providers, will incent LECs to offer interconnection arrangements that are fair, competitive and non-discriminatory. 13

It is not necessary to include a "most favored nations" clause in interconnection agreements or require that such agreements be filed with the Commission. The LECs are already obligated to provide service on a non-discriminatory basis and any party that believes that it is being treated unfairly can avail itself of the Commission's complaint process.

V. THE COMMISSION SHOULD NOT IMPOSE INTERCONNECTION REQUIREMENTS ON CMRS PROVIDERS.

The Commission also seeks comment on whether it should adopt rules requiring CMRS providers to provide interstate interconnection to other CMRS providers. NYNEX favors an open network architecture where all CMRS providers can interconnect with one another and with the landline network, thus affording mobile customers with full access to the nation's emerging telecommunications infrastructure. We believe that this can best be achieved through good faith negotiations between CMRS providers rather than through inflexible regulatory mandates. Negotiated interconnection agreements will lead to lower rates and more flexible service arrangements that will allow CMRS providers to provide mobile to mobile communication service in a more cost-effective manner.

NYNEX, however, does not believe that the Commission should impose mandatory interconnection requirements on CMRS providers. CMRS providers do not control essential facilities or have the market dominance that would give them the incentive and ability to create substantial barriers to entry. Section 201(a) of the Communications Act gives the Commission the authority to order interconnection only "after opportunity for hearing" and only when the Commission "finds such action necessary or desirable [to further] the public interest."

Although the Commission should not require universal interconnection by all CMRS providers, the Commission must

ensure that requests for interconnection between CMRS providers are not unreasonably denied.

Respectfully submitted,

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